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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Implementation of Sections of the)
Cable Television Consumer Protection)
and Competition Act of 1992)
Rate Regulation)

Leased Commercial Access)

CS Docket No. 96-60

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**COMMENTS
OF THE
SMALL CABLE BUSINESS ASSOCIATION
REGARDING THE
INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS**

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SUMMARY

The Commission has made great strides to understand the unique circumstances of small cable and tailor regulatory obligations to avoid placing disparate burdens on small operators. This has taken a conscious effort by all involved. It has worked. The Commission has custom tailored many rules to accommodate small operators once the Commission understood the economics and operations of small systems.

Because of the Commission's past performance, SCBA was very surprised to see the leased access proposals set forth by the Commission. The proposals ignore the unique cost structures of small cable and impose high per subscriber costs and require significant capital expenditures. These are exactly the same issues that the Commission worked through in revising its initial rate regulations in 1993-95 to accommodate small cable's unique circumstances. The Commission's rules not only violate the statutory parameters by forcing small cable to subsidize leased access programmers by not permitting small cable to recover all of its costs, and the rules will require small cable to provide free leased access.

The Commission's Initial Regulatory Flexibility Act Analysis demonstrates that the Commission has reverted to its pre-1993 pattern of striking disregard for small cable issues. The Commission claims not to know the number of small cable entities affected by requirements imposed on all cable systems. The Commission need look back no further than its *Small System Order* less than one year ago for that data. In fact, in reading the Commission's proposals one could have the impression that the Small Systems Order never happened at all. Because small cable issues were not considered in its proposals, the Commission proposed no alternatives to lessen the burden on small cable.

SCBA concurrently has filed extensive comments containing numerous alternative proposals to permit fair and less burdensome treatment to small cable. SCBA remains confident that the Commission will return to its careful consideration of and appropriate responses to small cable issues.

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**COMMENTS
OF THE
SMALL CABLE BUSINESS ASSOCIATION
REGARDING THE
INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS**

I. INTRODUCTION

The Small Cable Business Association ("SCBA"), through counsel, files these Comments in response to the Initial Regulatory Flexibility Act Analysis *Further Notice of Proposed Rulemaking* in this docket released on March 29, 1996 ("*Reconsideration Order*"). SCBA strongly objects to the analysis as it pays only lip service to the Commission's legal obligations.

In separate comments, SCBA has submitted numerous alternatives and modifications to the proposed regulations. SCBA urges the Commission to revise its proposals to lessen the burdens imposed on small cable. If its proposals are not adopted, SCBA expects the Commission to fulfill its statutory obligation to prepare a comprehensive Regulatory Flexibility Analysis setting forth in detail why specific alternatives were not adopted.

A. The Small Cable Business Association

SCBA is well known to the Commission as a participant and strong advocate for the needs and concerns of small cable in most rulemaking proceedings over the past three years of implementing the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").

SCBA grew from a grass-roots effort of small operators to cope with the onerous burdens imposed by the Commission's implementation of the 1992 Cable Act. From its first meeting in May 1993, SCBA has grown into a proactive force, currently having over 350 members.

B. SCBA's Leased Access Filings

The new leased access rules adopted by the *Order on Reconsideration* and the rules proposed by the *Further Notice of Proposed Rulemaking* place disparate burdens on small cable which are not required or permitted by statute. SCBA sets forth a comprehensive review and proposals to modify the leased access rules for small cable in a series of filings:

1. **Comments.** SCBA provides input on the rate formula and alternate ways to implement leased access requirements for small cable.
2. **Comments on Initial Regulatory Flexibility Act Analysis ("IRFA").** SCBA comments on the deficiencies in the Commission's IRFA.
3. **Comments on the Initial Paperwork Reduction Act of 1995 Analysis.** SCBA demonstrates how the information gathering rules adopted by the Commission in the *Order on Reconsideration* and the *Further Notice*

of *Proposed Rulemaking* are unnecessary, lack utility and are overly burdensome for small cable.

II. THE COMMISSION WRONGFULLY FAILED TO CONSIDER THE IMPACT OF ITS PROPOSALS ON SMALL CABLE

A. The Commission Improperly Claimed It Did Not Know How Many Small Cable Systems And Operators Would Be Impacted By Adoption of Industry Wide Regulations.

Almost three years after release of the *First Report and Order*¹, the Commission issued a *Further Notice of Proposed Rulemaking*², proposing strict and burdensome regulations on all cable operators, regardless of whether they had 100 or 10 million total subscribers. For example, one proposal required immediate and affirmative action be taken by all cable systems upon adoption of the regulation.³ Other proposals required operators to respond in short time frames to leased access providers, necessitating that operators prepare the information in advance.⁴

Nevertheless, the Commission's Initial Regulatory Flexibility Act Analysis claimed ignorance about the number of small cable entities impacted:

¹*Report and Order and Further Notice of Proposed Rulemaking*, In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266 (released May 3, 1993).

²*Order On Reconsideration Of The First Report And Order And Further Notice Of Proposed Rulemaking*, In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation; MM Docket No. 92-266 and CS Docket No. 96-60 (released March 29, 1996) ("*Reconsideration Order*").

³*Reconsideration Order* at ¶76 (requiring operators to create a channel bumping plan and place it in the public inspection file).

⁴*Reconsideration Order* at ¶40.

We anticipate a possible impact on small entities...including cable operators..., but we do not currently have information pertaining to the extent of such impact or the number of small entities that may be affected.

The Commission need not look far back to find extensive data on the size distribution, economic characteristics and other unique attributes of small cable.⁵ The Commission created its own extensive record on these issues, suggesting that the Commission's statement was either cavalier or disingenuous. The Commission has within its own records intensive data and its own conclusions about how many small systems and companies exist. It therefore could easily tailor requirements to lessen their burdens, just as it did in its rate regulation in the *Small System Order*.

B. The Commission Did Not Seek Specific Comment On Small Cable Regulation or Alternatives.

Despite its representation to the contrary in the Initial Regulatory Flexibility Act Analysis, the Commission failed to solicit comments regarding the impact of the proposals on small cable. Similarly, the Commission did not ask for alternatives as part of its "reconsideration". This failure to identify alternatives evidences the Commission's apparent total disregard for minimizing burdens on small cable in this rulemaking.

SCBA has quantified various costs and relationships associated with the burdens the Commission proposed. SCBA provided various alternatives that accomplish the statutory objectives but lessen the burdens on small cable. SCBA strongly urges the Commission to adopt them.

⁵*Sixth Order On Reconsideration And Further Notice Of Proposed Rulemaking*, In the Matter of Implementation of Section of the cable Television Consumer Protection and Competition Act of 1992: Rate Regulation; MM Docket No. 92-266 (released June 5, 1995) ("*Small System Order*").

III. CONCLUSION

Congress adopted the Regulatory Flexibility Act to protect the interests of small businesses, including small cable. The Commission has remedied past violations of statutory protections for small business. Unfortunately, SCBA finds itself back in the pre-1995 situation of once again having to call a breach of federal law to the Commission's attention. SCBA remains hopeful that by calling the violations to the Commission's attention and providing constructive suggestions, the Commission will take appropriate steps to protect small cable.

Respectfully submitted,



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